

*United States v. Juvenile*, 05-10461

APR 18 2006

BERZON, Circuit Judge, concurring in part and dissenting in part:

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

I concur in the majority's conclusion that the government presented sufficient evidence at trial to support the district court's adjudication of juvenile delinquency. I take a different view, however, on the question of whether the district court properly considered the rehabilitative aspects of the Federal Juvenile Delinquency Act (FJDA), 18 U.S.C. §§ 5031-5042, as required by our prior opinion in *United States v. Juvenile*, 347 F.3d 778 (9th Cir. 2003), in fashioning the sentencing in this case.

We stated in *Juvenile* that the rehabilitative function behind the FJDA “requires an assessment of the totality of the unique circumstances and rehabilitative needs of each juvenile.” 347 F.3d at 787. To that end, we held that “[i]t must be clear from the record, if not explicit, that a district court weighed all of the relevant factors and found that the disposition imposed was the least restrictive means to accomplish a young person's rehabilitation, given the needs of the child and the community,” and that “the District Court must provide a reasoned basis for why it has rejected less restrictive interventions.” *Id.* at 787-88.

I cannot say that the requirements of *Juvenile* were met in this case. The district court's comments at G.-A.'s sentencing indicated consideration only of

punitive and deterrent factors. The district court's statement that G.-A. had "become a drug smuggler" who was going to "pay the price" indicates that the twenty-four months of incarceration "was imposed for purely punitive or incapacitating purposes," and that the rehabilitative goals of the FJDA fell by the boards. *Id.*

I share the concern of the majority and the district court that G.-A. had already amassed a distressingly serious criminal record by the time of the disposition hearing. It may very well be that the district court believed that in light of G.-A.'s litany of criminal convictions, rehabilitation could only be achieved by some term of incarceration. But *Juvenile* requires that the district court at least consider the alternatives to incarceration and explain why they are not feasible to achieve rehabilitation. Here, the word rehabilitation is not even *mentioned*, let alone discussed, by the district judge at the imposition of sentence. Nor did the district judge explain why he chose to depart from the recommendation of the Department of Probation that G.-A. be sentenced only to a term of supervised probation because he had already "spent three months in custody pending disposition, and it is not believed additional detention would further his rehabilitation."

I am fully cognizant that vacating G.-A.'s sentence and remanding to the

district court with instructions to resentence him in light of the rehabilitative purposes of the FJDA may well be a futile exercise. Nonetheless, there is value to the legal system generally in insisting that district judges proceed along prescribed paths in making decisions. Among other reasons for so mandating is that words *can* influence actions. A course that at first blush seems appropriate to the district judge may be recognized as improper when the judge tries to justify it as precisely as the law requires.

By affirming the sentence imposed in this case, the majority has permitted this district court to disregard *Juvenile* and its mandate that sentences imposed pursuant to the FJDA should be designed with an eye towards rehabilitation, and not simply punishment. I therefore respectfully dissent.